Cement Masons Local 528, affiliated with the Operative Plasterers and Cement Masons International Association, AFL–CIO *and* General/Rainier, a Joint Venture and Washington and Northern Idaho District Council of Laborers, AFL–CIO, Party in Interest and Associated General Contractors of Washington, Party in Interest. Case 19–CD–464

January 19, 1993

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on July 30, 1992, and amended on August 11, 1992, by the Employer, General/Rainier, a Joint Venture, alleging that the Respondent, Cement Masons Local 528 (Local 528), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employes represented by the Washington and Northern Idaho District Council of Laborers (Laborers). The hearing was held September 2 and 3, 1992, before Hearing Officer James R. Kobe. Thereafter, Local 528, the Laborers, and the Employer filed briefs.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a joint venture composed of Rainier Steel, Inc. and General Construction, both of which are Washington corporations. As such, it has been engaged in the construction of bridge pontoons at sites in Seattle and Tacoma, Washington, where it annually realizes gross revenues of more than $500,000 and purchases goods valued in excess of $50,000 from directly outside the State of Washington. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 528 and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

On or about July 29, 1992, Local 528 suggested that certain work then being performed by employees represented by the Laborers should be assigned to employees it represented. On the following two days, Local 528, by and through its authorized agents, picketed the Employer's jobsites in Seattle and Tacoma, Washington, in furtherance of its claims.

B. *Work in Dispute*

The disputed work involves repairing concrete surfaces and includes the tasks of curing, placing, grinding, chipping, patching, and sawing cement and concrete on concrete pontoons at the jobsites named above.

C. *Contentions of the Parties*

The Employer contends that all the relevant factors support award of the disputed work to its employees represented by the Laborers. It especially relies on the longstanding practice of both participants in the joint venture of performing similar work with employees represented by the Laborers. The Employer further asserts that there is no agreed-on jurisdictional dispute mechanism to which all parties are bound.

Local 528 contends that its motion to quash, which it offered at the hearing on the instant dispute, should be granted because all parties to that dispute have agreed to a voluntary method for resolving jurisdictional disputes. Accordingly, it contends that the Board should now quash the notice of hearing and stay further processing of the charge.

The Laborers' contentions are essentially the same as the Employer's.

D. *Applicability of the Statute*

According to undisputed testimony,[1] on February 1, 1992, the Employer awarded the work in question to employees represented by the Laborers. On approximately July 29, an agent of Local 528, Joe Harrington, met with the Employer's vice president responsible for labor relations, Thomas R. Anderson, and advised him that he saw employees represented by the Laborers performing work that should be performed by Local 528. On the next 2 days, authorized representatives of Local 528 picketed the Employer's jobsites in Seattle and Tacoma to force the Employer to assign certain work being performed by the Laborers to Local 528. There is no evidence that Local 528 has subsequently relinquished its claim to the work.

Local 528 contends that all parties have agreed to a method for the voluntary adjustment of jurisdictional disputes. Local 528 principally relies on the Employer's execution of a project agreement with the Laborers binding it to an agreement with the Associated General Contractors. That agreement, in article 13, provides that jurisdictional disputes shall be adjusted ''in accordance with the current Plan for the Settlement of Jurisdictional Disputes,'' except where the union or the

[1] Local 528 limited its participation in the hearing to certain stipulations and moving to quash the notice of hearing. It did not offer any testimony.

employer is not a party to the procedures established by the Impartial Jurisdictional Disputes Board. In such cases the dispute is to be resolved by the affiliated International unions.

The Employer contends that it is not a signatory to the Plan for the Settlement of Jurisdictional Disputes and that neither it nor the two Unions involved in the instant dispute are obligated to the plan.

Notwithstanding the conflicting claims by the parties, we find it determinative that since 1989, the agreement between Local 528 and the Associated General Contractors of Washington[2] has not contained the article 13 provision that Local 528 asserts provides an agreed-on method for resolution of the instant 1992 dispute. Thus, Local 528 is not obligated to the settlement procedure specified in that article even if it were otherwise applicable.[3]

Under the foregoing circumstances, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there is no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Collective-bargaining agreements

The Employer has a labor agreement with the Laborers and has no agreement, either present or past, with Local 528. Further, General Construction Company, one of the joint venture participants, has had no agreement with Local 528 for many years and Rainier Steel, Inc., the other participant, has never had a contractual relationship with Local 528. Pursuant to article 20 of the Laborers' agreement, laborers repair defects in concrete bridge surfaces. This factor favors award of the work to employees represented by the Laborers.

2. Employer preference and past practice

The joint venture, by its current assignment of the disputed work to employees represented by the Laborers, has indicated that it prefers to assign the work in question to those employees. Consequently, this factor favors award of the disputed work to employees represented by the Laborers.

3. Area and industry practice

Similar companies in the area engaged in similar work use individuals represented by the Laborers to perform the disputed work. Thus the record in this category weighs toward award of the disputed work to employees represented by the Laborers.

4. Relative skills

The Employer presented testimony that employees represented by the Laborers have been satisfactory and receive training in all aspects of the disputed work. Thus it appears that these employees have skills equal to those of employees represented by Local 528 and that this factor does not favor awarding the work to either group of employees.

5. Economy and efficiency of operations

The Employer presented testimony that employees represented by the Laborers can perform the work at issue more economically and with greater efficiency than employees represented by Local 528. The testimony proffered by the Employer indicated that employees represented by the Laborers perform tasks other than those in dispute while employees represented by Local 528 would not do so. That testimony further suggested that the speed and efficiency of the employees represented by the Laborers would be reduced if the Employer were required to add additional crafts to a confined area. It asserted that the use of members of both crafts would result in more idle time and a less stable work force, and would require additional layers of supervision. In the absence of information to the contrary, this factor favors award of the disputed work to employees represented by the Laborers.

6. Similar awards

The Laborers produced a decision made under the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry in which similar work was awarded to employees represented by the Laborers. The evidence presented is not sufficient to be of value.

7. Other factors

The Employer suggests that because employees represented by Local 528 would receive a higher wage for performing the same work as had already been performed by the employees represented by the Laborers,

[2] Local 528 has no collective-bargaining agreement with the Employer.

[3] Unless all necessary parties are bound to a particular method for voluntary dispute resolution, that method does not bar a Board determination. *Electrical Workers IBEW Local 103 (Sylvania Lighting)*, 301 NLRB 213, 214 fn. 6 (1991).

the latter group's attitude and resultant productivity would be adversely affected. The Board does not rely on wage differentials in jurisdictional disputes and this assertion otherwise is too speculative to weigh in favor of employees represented by either Union.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Laborers are entitled to perform the work in the dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, and economy and efficiency.

In making this determination, we are awarding the work to employees represented by Washington and Northern Idaho District Council of Laborers, AFL–CIO, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of General/Rainier, a Joint Venture, represented by Washington and Northern Idaho District Council of Laborers, AFL–CIO are entitled to perform the disputed work of repairing concrete surfaces at the Employer's sites in Seattle and Tacoma, Washington, including the tasks of curing, placing, grinding, chipping, patching, and sawing cement and concrete on concrete pontoons.

2. Cement Masons Local 528, affiliated with the Operative Plasterers and Cement Masons International Association, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force General/Rainier, a Joint Venture, to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local 528 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), assign the disputed work in a manner inconsistent with the determination.